

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.447 OF 2005

Venkatesh Ramchandra Deshpande .. Appellant
V/s
Rajabhau @ Bhausahab Deshpande & Ors. .. Respondents
Mr.S.Sakhare for the Appellant.

CORAM: A.S.OKA, J.
DATE : 05.05.2005.

P.C.:

1. The Second Appeal is by original Defendant No.1. Decree for possession has been passed against the Appellant-original Defendant No.1. The original Plaintiff-Respondent No.1 is the grandson of one Hari. Hari and father of the appellant were real brothers. The case of Respondent No.1 plaintiff was that the suit property was allotted to the share of his grand-father Hari and the appellant was in possession of the suit property as a gratuitous licensee.

2. The case made out by the Appellant-Defendant No.1 in his Written Statement was that his father Ramchandra was the owner of the suit property. In the alternative, it was contended by the appellant that his father Ramchandra had undivided one half share in the suit premises. The Trial Court dismissed the suit. The Appellate Court considered the case of the appellant that his father Ramchandra purchased the suit property by a registered sale deed from Hari. The Appellate

Court found that sale deed was not produced and proved. Therefore, the Appellate Court held that ownership of Hari was established and that is the reason why Appellate Court accepted the case of Respondent No.1 that the Appellant was a gratuitous licensee.

3. Heard the learned Advocate appearing for Appellant. He submitted that even if sale deed executed by Hari in favour of Ramchandra is not produced, mutation entry made on the basis of sale deed is produced on record. He submitted that in any event, Ramchandra was having undivided share in the suit property which was admittedly ancestral property as there was no evidence of partition effected on 28.05.1896. He submitted that in these circumstances, the Appellant cannot be a gratuitous licensee.

4. In the evidence of the Appellant he has stated that in the year 1896 there was partition amongst Govind, Ramchandra and Hari, and Ramchandra purchased share of Hari immediately after the execution of the partition deed. Thus, the Appellant placed reliance on the sale deed which was executed by Hari in favour of Ramchandra. However, the Sale Deed was not produced.

5. The case of the Appellant that Ramchandra had one half share in the property being the ancestral property was made out in the Written Statement in the alternative. However, from the evidence on record, it

appears that at the time of evidence, the Appellant accepted the partition which had taken place in 1896 between Ramchandra, Govind and Hari and he stated that Ramchandra purchased the property immediately after partition from Hari. Once the Appellant relied on the partition of 1896 and once he accepted that Hari was allotted the suit property in partition of 1896, the appellant cannot be heard to say that there was no partition in 1896. The Appellant has admittedly not proved the sale deed executed in favour of his father. Mutation entry referring to the sale deed cannot be the evidence of sale deed. That is the reason why the Appellate Court recorded the finding that the Appellant has no title and accepted the case that the Appellant was gratuitous licensee.

6. No fault cannot be found in the impugned judgment and decree. No substantial question of law arise. Second Appeal is dismissed with no order as to costs.

JUDGE